

THAB

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

-----X
UNCLE BEN'S, INC., :
 :
Opposer, :
 :
v. :
 :
ZANE HULLIHEN, :
 :
Applicant. :
-----X

Serial No.: 76/117,922

Opposition No.:



07-18-2002

U.S. Patent & TMO/tc/TM Mail Rcpt Dt. #71

I hereby certify that this correspondence is being deposited
with the United States Postal Service as first class mail in an
envelope addressed to : Assistant Commissioner for Trademarks, 2200
Crystal Drive, Arlington, Virginia 22202-3513 on 7/15/02
(Date of Deposit)

TIMOTHY J. DELLY

Noticed Attorney for Applicant

Signature

Date of Signature 7/15/02

NOTICE OF OPPOSITION

In the matter of pending trademark application Serial No. 76/117,922 for the
mark UNCLE FRED'S SAUSAGE & Portrait Design (hereinafter the "Mark") in
International Class 29 filed by Zane Hullihen (hereinafter "Applicant") for sausage,
published in the Official Gazette of January 15, 2002, Uncle Ben's, Inc. (hereinafter
"Opposer" or "Uncle Ben's"), whose address is 3250 E. 44th Street, Vernon, California
90058, believes it will be damaged by the registration of such trademark and hereby
opposes same.

The grounds for opposition are as follows:

1. Opposer is and for many years has been an internationally known
manufacturer, distributor and seller of food products including its UNCLE BEN'S® Brand
rices, rice mixes, packaged entrees (containing meat, vegetables, rice, pasta, sauces and
seasonings), soups, stuffing mixes, sauces and marinades.

TRADEMARK TRIAL AND
APPEAL BOARD
02 JUL 25 AM 8:33

07/24/2002 SWILSON 00000097 76117922

01 FC:377

300.00 DP

h

2. Opposer is using the distinctive trademark UNCLE BEN'S® in interstate commerce, and has used that trademark in connection with food products since at least as early as 1937.

3. In addition to the famous UNCLE BEN'S® trademark, Uncle Ben's is using, and for many decades has used, the famous "Portrait of Uncle Ben" trademark in connection with its rice and other food products.

4. Long prior to the filing date of the intent-to-use application opposed herein, Opposer adopted and used the famous trademarks UNCLE BEN'S® and the "Portrait of Uncle Ben" for food products and related services. In connection with such use, Opposer has spent substantial sums of money advertising and promoting its products and services sold under these trademarks, and has enjoyed substantial sales of such products and services.

5. Opposer is the owner of numerous Federal trademark registrations for the trademark UNCLE BEN'S® and for the "Portrait of Uncle Ben" design. These trademark registrations include, but are not limited to, the following:

<u>Trademark</u>	<u>Registration No.</u>	<u>Registration Date</u>	<u>Goods</u>
UNCLE BEN'S	437,176	March 9, 1948	rice for food
UNCLE BEN'S	740,123	October 30, 1962	food mixes consisting of rice, dehydrated vegetables, chicken or meat extracts, spices, seasonings and other food ingredients

<u>Trademark</u>	<u>Registration No.</u>	<u>Registration Date</u>	<u>Goods</u>
UNCLE BEN'S	903,134	November 24, 1970	rice
UNCLE BEN'S CHILI BOWL	2,511,231	November 20, 2001	frozen rice and vegetable dishes
UNCLE BEN'S	1,695,480	June 16, 1992	gravies and sauces
UNCLE BEN'S AND DESIGN	1,888,708	April 11, 1995	rice
UNCLE BEN'S	1,995,687	August 20, 1996	rice pudding mix
UNCLE BEN'S	1,997,104	August 27, 1996	rice and beans mix
UNCLE BEN'S	2,001,081	September 17, 1996	soup mixes
UNCLE BEN'S	2,002,712	September 24, 1996	stuffing mixes containing bread

Certified copies of these registrations (as well as others) will be made of record during Opposer's testimony period.

6. As a result of the substantial use, sales, advertising and promotion by Opposer of products bearing the UNCLE BEN'S® and "Portrait of Uncle Ben" trademarks, those trademarks (and, indeed, the UNCLE BEN'S® family of trademarks), have become famous and exclusively associated with Opposer. Further, as a result of this extensive use, Opposer has acquired an eminent reputation and valuable goodwill throughout the United States in these trademarks and in the UNCLE BEN'S® family of trademarks as a whole.

7. Because the UNCLE BEN'S® and "Portrait of Uncle Ben" trademarks and the goods and services sold by Uncle Ben's under those trademarks are exclusively associated with Opposer, the registration of the substantially similar mark UNCLE FRED'S SAUSAGE & Portrait Design, by Applicant for food products, namely sausage, will inevitably cause confusion in the minds of the public, leading the public to believe that Applicant's goods emanate from Opposer or that Applicant is in some way associated with or connected to Opposer, when no such relationship exists.

8. Upon information and belief, the products upon which Applicant intends to use the mark -- sausage -- are sold and promoted in at least some of the same channels of trade as, and to the same class of consumers as, the food products bearing Opposer's UNCLE BEN'S® and "Portrait of Uncle Ben" trademarks.

9. Accordingly, because the goods for which Applicant's mark is used are closely related to, will travel in the same channels of trade as, and will be marketed to the same classes of consumers as those goods on which Opposer has been and presently is using its famous and well-known UNCLE BEN'S® and "Portrait of Uncle Ben" trademarks, registration of the mark UNCLE FRED'S SAUSAGE by Applicant in connection with the goods specified in its application is likely to cause consumers to be confused, mistaken or deceived as to the source, origin or sponsorship of Applicant's goods, to believe that Applicant's goods emanate from Opposer, to believe that Applicant is in some way related to Opposer, and/or to believe that Applicant's products marketed under the opposed mark are marketed with the consent, permission or authorization of Opposer.

10. Further, due to the fame and distinctiveness of the UNCLE BEN'S® and "Portrait of Uncle Ben" trademarks, Applicant's use of the mark UNCLE FRED'S SAUSAGE & Portrait Design on and in connection with food products is likely to dilute the distinctive quality of Opposer's trademarks, and thereby further damage Opposer.

11. For the foregoing reasons Opposer will be damaged by the registration of Applicant's alleged mark because such registration will dilute the distinctive quality of the UNCLE BEN'S® and "Portrait of Uncle Ben" trademarks, and the public and the trade will be caused to believe that the goods sold under Applicant's alleged trademark are produced or licensed by Opposer under the UNCLE BEN'S® trademark, the "Portrait of Uncle Ben" trademark, and/or one of Opposer's family of UNCLE BEN'S® trademarks, and/or are produced by Applicant under a mark confusingly similar to Opposer's UNCLE BEN'S® marks with the authorization, permission or sponsorship of Opposer.

12. For the foregoing reasons, Applicant is not entitled to registration of its alleged mark UNCLE FRED'S SAUSAGE, and is not entitled to the exclusive use thereof.

WHEREFORE, Opposer respectfully requests that this opposition be sustained and registration of the mark UNCLE FRED'S SAUSAGE & Portrait Design as sought by Applicant be refused.

Respectfully submitted,

Dated: July 15, 2002

By: 

Timothy J. Kelly
FITZPATRICK, CELLA, HARPER
& SCINTO
30 Rockefeller Plaza
New York, New York 10112
(212) 218-2100

Attorneys for Opposer,
Uncle Ben's, Inc.